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Why the United States leads the world in the...

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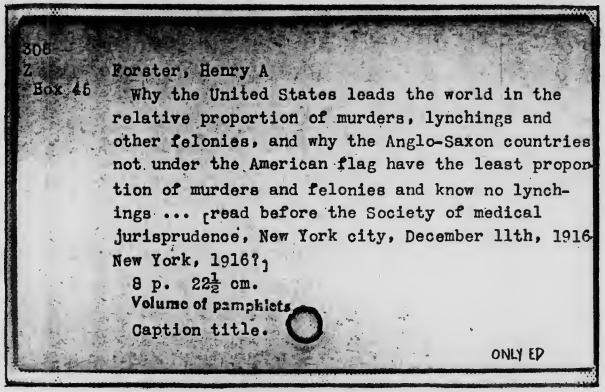

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Why the United States leads the world in the relative proportion of murders, lynchings and other felonies, and why the Anglo-Saxon countries not under the American flag have the least proportion of murders and felonies and know no lynchings.*

HENRY A. FORSTER, ESQ.,
of the New York Bar.

Among the enlightened nations the United States leads the world in manumitting murderers and enlarging felons, while Anglo-Saxon countries not under the American flag have the least percentage of murderers and felons.

Has any other nation laws which its courts of last resort characterize as "a shelter to the guilty," which "has no place in the jurisprudence of civilized and free countries outside the domain of the common law, and it is nowhere observed among our own people in the search for truth outside the administration of the law" (Twining vs. New Jersey, 211 U. S. 91, 113), or as "the privilege of crime" (State vs. Wentworth, 65 Maine, 241)?

Ex-President William H. Taft in his address before the Civic Forum of New York City on April 28, 1908, said (p. 15):

> "And now, what has been the result of the lax administration of criminal law in this country? Criminal statistics are exceedingly difficult to obtain. The number of homicides one can note from the daily newspapers, the number of lynchings and the number of executions, but the number of indictments, trials, convictions, acquittals, or mistrials it is hard to find. Since 1885 in the United States there have been 131,951 murders and homicides, and there have been 2,286 executions. In 1885 the number of murders was 1,808. In 1904 it has increased to 8,482. The number of executions in 1885 was 108. In 1904 it was 116. This startling increase in the number of murders and homicides as compared with the number of executions tells the story. As murder is on the increase, so are all offences of the felony class, and there can be no doubt that they will continue to increase unless the criminal laws are enforced with more certainty, more uniformity, more severity than they now are."

The criminal statistics referred to by ex-President Taft are those published by the Chicago Tribune either on New Year's Day or else on the last day of each year since 1885, showing the number of homicides and executions in the United States for each year.

* Read before the Society of Medical Jurisprudence, New York City, December 11th, 1916.

The Chicago Tribune gives the number of homicides (including manslaughters) in the United States in 1912 as 9,152; the number of executions in 1912 as 145; it gives the number of homicides (including manslaughters) in 1913 as 8,902; the number of executions in 1913 as 88; it gives the number of homicides (and manslaughters) in 1914 as 8,251: the number of executions in 1914 (including 2 for another felony) as 74; it gives the number of homicides (and manslaughters) in 1915 as 9,230; the number of executions in 1915 (including 8 for another felony) as 119.

According to the Judicial Statistics, England and Wales, 1913 (Part I Criminal Statistics pp. 18, 26) there were reported to the police of England and Wales during the year 1913, 111 murders of persons aged more than one year and 67 murders of infants of one year or less. On these 178 reported English and Welsh murders, 67 persons were brought to trial for murder; there were 28 convictions and death sentences; 16 executions; 12 commutations to penal servitude for life; 5 accused were found insane on arraignment; 17 were found guilty but insane and 17 were acquitted.

In 1913, 154 manslaughters were reported to the English and Welsh police (p. 18), on which 136 persons were brought to trial, on which trials there were 63 convictions and sentences (p. 26).

In 1914 the number of murders and manslaughters reported to the police of England and Wales is not given; 55 persons were brought to trial for murder; 23 were convicted of murder and sentenced to death; 14 were executed; the sentences of 8 were commuted to penal servitude for life; 12 were found guilty but insane; 11 by jury and 1 by court of Criminal Appeal; 6 were found insane on arraignment and 14 were acquitted including one quashed conviction by Court of Criminal Appeal.

In 1914, 117 were brought to trial in England and Wales for manslaughter, of which 48 were convicted and sentenced. (Judicial Statistics, England and Wales, 1914, Part I, Criminal Statistics, pp. 12-13.)

According to the Canadian criminal statistics for the years ending September 30, 1913, and September 30, 1914:

In 1913, 55 persons were charged with murder, of whom 23 were convicted and sentenced to death, 5 were detained for lunacy and 27 were acquitted. (Criminal Statistics for the year ending September 30, 1913, p. 2.)

In 1914, 62 persons were charged with murder, of whom 27 were convicted and sentenced to death, 4 were detained for lunacy and 31 were acquitted. (Criminal Statistics for the year ending September 30, 1914, p. 2.)

In 1913, 61 persons were charged with manslaughter, of whom 44 were convicted, 1 was detained for lunacy and 16 were acquitted. (Criminal Statistics for 1913, pp. 8-10.)

In 1914, 59 persons were charged with manslaughter, of whom 39 were convicted and 20 were acquitted. (Criminal Statistics for 1914, pp. 8-10.)

In 1913, also in 1914, two persons each year were charged with infanticide; all four were acquitted. (Criminal Statistics for 1913 and 1914, p. 10.)

The population of the Dominion of Canada is given by the last census as 7,206,643.

Moorfield Storey (Reform of Legal Procedure, 196), quoting Andrew D. White, says:

"The murder rate in the United States is from ten to twenty times greater than the murder rate of the British Empire and other northwestern European countries."

The World Almanac for 1911, 1912 and 1913, under "Statistics of Homicide," says convictions in Germany equalled 95% and a fraction; in the United States 1.3%.

Frederick L. Hoffman, Life Insurance Statistician of Newark, New Jersey, says ("Homicide Record of American Cities for 1914" Spectator, December 23, 1915, p. 390):

"Our murder death rate (for, of course, the statistics used refer only to the recorded deaths from homicide and not to judicial convictions) for the registration area for the period 1909-1913 was 6.4 per 100,000 of population. The rate for England and Wales (1904-1913)' was 0.8; for Prussia (1904-1913), 2.0; for Australia (1910-1913), 1.9; and finally, for Italy (1908-1912), 3.6. In other words, the number of murders in the United States at the present time, proportionate to population, is about 100 homicides for every thirteen committed in England and Wales, thirty in Australia, thirty-one in Prussia and fifty-six in Italy. * * * It admits of no argument that among the civilized countries of the world the United States stands to-day in deplorable contrast as regards the security of the person against the risk of homicidal death."

In addition to "The Statute" extending the privilege of avoiding self-incrimination, "in tenderness to the weakness of those who * * * * may have been in some degree compromised" (Wilson vs. U. S. 149 U. S. 66), 21 out of our 48 States have either by constitution or statute reduced the trial judge in jury cases to a mere moderator by forbidding him from advising the jury on the facts or expressing his opinion on questions of fact, notwithstanding that all questions of fact in jury cases are left to the jury's sole and ultimate determination. This took away a judicial right and duty which every English and Federal trial judge exercises to the public advantage. In 15 more of our States the state courts of last

resort have by judicial decisions suppressed or abdicated their trial judges' right and duty to act as judges and have reduced them to mere moderators. (Edson R. Sunderland, Inefficiency of the American Jury, 13 Michigan Law Review, 307-316.)

Other results of statutory shelters to the guilty, statutory privileges of crime and statutory tenderness to the weakness of the compromised, accompanied by the trial judges in a majority of the States being forced to act as moderators and abdicate their inherent functions as judges to advise the jury on the facts.

Between 1882 and 1903 lynchings aggregating 3,337 were reported in 44 of our 49 continental States and Territories (Cutler, Lynch Law, 179-185). In other nations lynching now exists only in parts of rural Russia where the laws provide an inadequate punishment for horse stealing (Cutler, Lynch Law, 3). Lynching does not now exist anywhere under the British, French, Dutch or German flags (Cutler, Lynch Law, 1, 3), although all these nations have frontier and mixed race conditions in their colonies, dependencies and possessions, which if either mixed races or frontier conditions were primary causes of lynching, would lead to an amount of it in excess of anything we have ever known.

It is quite true that Anglo-Saxon popular tribunals and lynching originated in the marches of Scotland in the days of the border wars and was practiced also by the vehmgericht in Germany in the days when the power formerly exercised by the Hohenstaufen Emperors had been usurped by the robber knights; also that it was used in expelling Tories and desperadoes and confiscating their lands during the lawless times of and following the American Revolution (Cutler, Lynch Law, 5-10, 13-36, 59-76, 88-89; 1 Bancroft Popular Tribunals, 2-7.)

To understand popular tribunals and lynching, the attitude of the vigilants and their responsible supporters and neighbors is of more weight than that of the outlaws or the formal legalistic critics of the vigilants who confine their activity to destructive criticism and make no attempt to remedy the underlying causes that have led to popular tribunals, popular justice or extra legal criminal justice in 44 of our 49 continental States and Territories.

Dean J. E. Cutler and Judge George C. Holt attempted to ascertain the views of the neighbors and upholders of vigilants by questionnaires, but no answers of value were received (Cutler, Lynch Law, 155-7).

Hubert Howe Bancroft's (Popular Tribunals) justifies the two San Francisco vigilance committees (of 1851 also of 1856) as well as the other responsible vigilance committees

of the Pacific Coast and what are now the Rocky Mountain States before the Civil War, on the ground of necessity, because the State and Territorial Governments had alike abdicated their primary duty to preserve life and enforce public order and security, also their duty to punish crime (2 Bancroft Popular Tribunals, 666, 675-93; Cutler, Lynch Law, 132-5, 193-226).

Bancroft was the confidant of the leading vigilants and had the free use of their archives and records.

Bancroft says (1 Popular Tribunals, 748-9):

"Sixteen executions in thirty years, dating from 1847, the opening year of Yerba Buena's aspirations. These, with the four hangings by the Vigilance Committee of 1851, and four by that of 1856, comprise the catalogue. Millions of money had been paid by the citizens to keep running criminal courts and police regulations these thirty years, and hundreds of men were all the time at large whom the law pronounced guilty of death, and only sixteen capital punishments! Says the Sacramento Union of the 28th of May of the citizens composing the Committee of 1856:

"'They have calmly stood by and seen and heard of some fourteen hundred murders in San Francisco in six years, and only three of the murderers hung, under the law, and one of those was a friendless Mexican.'

"I have given in this volume many examples of Popular Tribunals, but the half has not been told. It is safe to say that thus far in the history of these Pacific States far more has been done toward righting wrongs and administering justice outside the pale of law than within it.

"Out of five hundred and thirty-five homicides which occurred in California during the year 1855 there were but seven legal executions and forty-nine informal ones. Of the latter ten occurred in the month of January, not one of which would have been consummated if left to the machinery of law. So it was in Nevada ten years later: to one hundred and fifty homicides there were but two legal executions. It was the Augustan age of murder."

Bancroft quotes the London Times' view that if California's lax criminal law enforcement was so serious an evil as to need a vigilance committee "to supersede the law of the land in open day" to restore public order, it "could have no possible difficulty in amending the administration of this law, had they directed their efforts to such purpose instead of dispensing with law altogether." (2 Bancroft, 681-2.)

Strong trial judges of the British or Federal type, or a strong California criminal procedure of the English, Canadian or Australian type, which convicts the criminal instead of manumitting or enlarging him, was the last thing the vigilants or the Californians of 1851 to 1856 desired.

William T. Coleman (the president of the 1856 Vigilance Committee) wrote his executive committee:

"Keep all cases in California from judges, but have juries in all cases." (2 Bancroft, 616.)

Bancroft voicing the vigilant view says:

"There will be popular tribunals as long as evolution lasts. We are never going back to king worship or law worship." (2 Bancroft, 668.)

"Popular tribunals" and the so called "Right of revolution" were the vigilant ideals. (2 Bancroft Popular Tribunals 668-71, 675, 677-681, 154; Cutler, Lynch Law, 193-8, 226, 29-30, 72-3, 109-10; Royce, California, 421-2, 439-447, 465, 316-324.)

"But here on this coast had been law without order for years, and at last the people were determined to have order, even at the sacrifice, if necessary, of the forms of law. Law had become criminal, and must be put upon trial by the people for dereliction of duty." (2 Bancroft; 145.)

"For some few centuries yet the iron-bound dogmatism of ancient societies will continue to condemn the action and principles of popular tribunals. *** They will continue to see no difference between a mob and a committee of vigilance, between a turbulent, disorderly rabble, hot with passion, breaking the law for vile purposes, and a convention of virtuous, intelligent, and responsible citizens with coolness and deliberation arresting momentarily the operations of law for the salvation of society. ***

"But the time will come when intelligent men everywhere will acknowledge the superiority of this principle. *** It will then be seen that that government is most stable which is founded on rectitude and independence, which relies for its support on the will of a virtue-loving people, and not on tradition or inexorable law. It will then be seen, more clearly than now, that all power vests in the people, whether they chose to use it or to remain bound by superstitious veneration of shadow, that even after law is made and execution provided, the executive has no power except such as is daily and hourly continued to him by the people." (2 Bancroft, 670-1.)

In California the trial judge in jury cases is a mere moderator and is not allowed to advise the jury on any question of fact (McMinn vs. Whelan, 27 Cal., 300, 319-320; Sunderland, Inefficiency of the American Jury, 13 Michigan Law Review, 308-9).

Bancroft points out that Macaulay's prophecy of 1857 as to America's future danger was clearly inspired by San Francisco's two Vigilance Committees:

"Either some Cæser or Napoleon will seize the reins of government with a strong hand, or your republic will be as fearfully plundered and laid waste by barbarians in the twentieth century as the Roman Empire was in the fifth; with this difference, that the Huns and Vandals who ravaged the Roman Empire came from without, and that your Huns and Vandals will have been engendered within your country by your own institutions." (2 Popular Tribunals, 747.)

The vital features in which the English, Australian and Canadian criminal procedure differs from that of the majority of American criminal courts are the following:

1. The British, Scotch, Canadian, Australian, South African or Indian trial judge is a strong judge, not a mere moderator. He gives the jury the benefit of his experience and skill by advising them in difficult cases respecting the weight and effect of the evidence, what he believes the evidence had shown, but he also informs the jury that they are the sole judges of the facts and are at liberty to disregard his advice. The distinctive feature of Anglo-Saxon jury trials is a strong and experienced trial judge aiding and advising the jury, but leaving the ultimate decision of all disputed questions of fact to the jury, instead of acting as a weak and opinionless moderator, as the trial judge must do in three-fourths of our States. In Canada the judge may try most criminal cases without a jury where a jury is waived by defendant.

2. In Great Britain and Australia the trial judge in any criminal case where the defendant elects to stand mute (or fails to testify in his own behalf) may and generally does charge the jury that they may consider the defendant's failure to testify in his own behalf. New Jersey is the only American State where the trial judge may do this.

3. Blanket or joint indictments are allowed where (1) there are several charges against the defendant or defendants for the same act or transaction, (2) for two or more acts or transactions connected together, or (3) for two or more acts or transactions of the same class of crimes or offences, as in the Federal courts.

4. Short form simplified indictments merely charging defendant with the commission of any specified indictable offense in the very words of the statute, as for example "murder" or "grand larceny," supplemented by a bill of particulars when details are necessary.

5. Joint trials of all joint indictments are in the court's discretion, instead of separate trials being a matter of right.

6. Decisions on habeas corpus are final and conclusive as to the issues there involved. The unlimited number of writs of habeas corpus allowed in some American states for the same cause is unheard of anywhere in the British Empire.

7. Exceptions to rulings upon challenges of jurors are unheard of. An English judge's rulings upon the challenge of a juryman for cause are not subject to review as they are here.

8. No trial by newspaper, no publicity bureau work is allowed while any action, whether criminal or civil, is pending; only a true and fair report of evidence and court proceedings is allowed to be published pendente lite; sweat box and third degree are unknown alike among the police and public prosecutors. Trial by newspaper and publicity bureau work pen-

dente lite are suppressed by vigorous enforcement of the common law practice in relation to contempt of court.

9. Reversals on appeal for harmless technical errors not affecting the result are unheard of. In Great Britain on appeal by defendant a sentence may be increased.

10. The keeping and publication of complete, scientific and yet laconic judicial statistics, both criminal statistics and civil statistics.

11. Bar discipline is strictly enforced.

Throughout the British Empire there is a universal respect for the courts and the law, especially for the criminal law, which is unknown in this country.

The primary duty of all governments is to preserve life and enforce the public order and security by enforcing the criminal law as well as necessary police regulations. When this duty is locally or partially neglected, unless extra legal vigilance supplements the defective administration of the criminal law, local turbulence, riots and anarchy until suppressed by martial law are probable sooner or later.

When this duty is generally neglected throughout a nation for a sufficient period of time, class conflicts, general strikes, sectional strife, revolution or social war will usually follow unless the local disturbances or general national weakness becomes so great as to cause a foreign nation whose people are disciplined and orderly (though perchance with a lower standard of living, i. e. with more plain living and more high thinking), to send either a punitive expedition to punish and procure indemnity for lawless outrages upon or assassinations of its nationals, or else an invading army to conquer and annex the decadent and anarchical country, as was done in the several partitions of the Polish Commonwealth during the 18th century; in Italy during the 16th century; as well as following the decline of Greece and the Greek cities of Asia Minor and Southern Italy by the Roman Republic.

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